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# Civil Procedure

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# Civil Procedure

## Civil Procedure; actions against attorneys for civil conspiracy

Civil Code § 1714.10 (amended).

SB 820 (Thompson); 1991 STAT. Ch. 916

Under existing law, a cause of action against an attorney for civil conspiracy<sup>1</sup> with a client can be included in a complaint only after the court determines that there is a reasonable probability the plaintiff will prevail.<sup>2</sup> Chapter 916 limits the existing pleading requirements for civil conspiracies between attorneys and clients arising from an attempt to contest or compromise a claim or dispute based upon the attorneys representation of the client.<sup>3</sup>

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1. See, e.g., *Doctors' Co. v. Superior Court*, 49 Cal. 3d 39, 44, 775 P.2d 508, 510-11, 260 Cal. Rptr. 183, 185-86 (1989) (quoting *Max, Inc. v. Woods*, 202 Cal. 675, 677-78, 262 P. 302, 303 (1927) (delineating the elements of a cause of action for civil conspiracy)).

2. CAL. CIV. CODE § 1714.10(a) (amended by Chapter 916). The party seeking to enter a claim pursuant to section 1714.10(a) must file a verified petition with supporting affidavits stating the facts on which liability is based in order to establish a reasonable probability. *Id.* Existing case law also provides that a cause of action for civil conspiracy against an attorney may not arise unless the attorney had a personal duty to the plaintiff, which duty was violated by the wrongdoing. *Doctors' Co.*, 49 Cal. 3d at 45, 775 P.2d at 511, 260 Cal. Rptr. at 186. The court held that California Insurance Code section 790.03(h)(5) is a statutory duty which is peculiar to insurers, and therefore did not subject the noninsurer defendants, who were acting as agents, to that duty. *Id.* See CAL. INS. CODE § 790.03(h)(5) (West Supp. 1991) (stating that a general business practice of not attempting in good faith to effectuate prompt settlements of claims in which liability has become reasonably clear is an unfair and deceptive act in the business of insurance).

3. CAL. CIV. CODE § 1714.10(a) (amended by Chapter 916). However, Chapter 916 does not apply to civil conspiracy actions where the attorney has an independent legal duty to the plaintiff or the attorney's acts go beyond a professional duty and involve conspiracy to further the attorney's own financial gain. *Id.* § 1714.10(c) (amended by Chapter 916). See *Doctors' Co.*, 39 Cal. 3d at 47, 775 P.2d at 513, 260 Cal. Rptr. at 188 (suggesting an attorney acting as an agent will be held liable for civil conspiracy if the attorney acts as an individual for individual advantage).

**Civil Procedure; arbitration agreements--subcontractors;  
general contractors**

Code of Civil Procedure § 410.42 (new).  
AB 1051 (Eastin); 1991 STAT. Ch. 582

Under existing law, California courts may exercise jurisdiction over actions as prescribed in the state Constitution.<sup>1</sup> Existing law favors the use of certain forms of alternative dispute resolution such as arbitration.<sup>2</sup> Chapter 582 provides that any contract provision between a general contractor and a California subcontractor for construction<sup>3</sup> to be done within the state is void if it requires contract disputes to be litigated, arbitrated or otherwise resolved outside California.<sup>4</sup> Chapter 582 also voids any contract which prohibits a party to the contract from instituting an action in California.<sup>5</sup>

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1. See CAL. CONST. art. VI, § 5(a) (West Supp. 1991) (granting jurisdiction of municipal and justice courts); § 10 (West Supp. 1991) (providing original jurisdiction for the Supreme and Superior Courts); § 11 (West Supp. 1991) (providing appellate jurisdiction for the Supreme and Superior Courts).

2. CAL. BUS. & PROF. CODE § 465(b) (West 1990). See *Moses H. Cone Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24-25 (1983) (holding that as a matter of law, any doubts as to the scope of arbitrable issues should be resolved in favor of arbitration).

3. See CAL. CIV. PROC. CODE § 410.42(b) (enacted by Chapter 582) (providing that for the purposes of Chapter 582, "construction" means any work performed on, or materials provided for a work of improvement as defined in Civil Code section 3106, and for which a lien may be claimed under Civil Code section 3110, or for which such a lien could be claimed but for Civil Code section 3109).

4. *Id.* § 410.42(a) (enacted by Chapter 582).

5. *Id.* § 410.42(b) (enacted by Chapter 582). Compare VA. CODE ANN. § 8.01-262.1 (Michie Supp. 1991) (providing that where a subcontractor's principal place of business is within the state, any cause of action based upon a construction contract may be brought in the jurisdiction where the construction was performed, no matter what the contract provides).

## Civil Procedure; default judgment

Code of Civil Procedure § 585.1 (repealed); §§ 415.46, 715.010, 715.020, 1169, 1174.25, 1174.3 (amended).  
SB 323 (Petriss); 1991 STAT. Ch. 57  
(Effective June 17, 1991)

Under prior law, an application to enter default<sup>1</sup> had to include an affidavit that certain conditions had been met.<sup>2</sup> Additionally, under prior law, a default judgment did not take effect until ten days after the filing of the application to enter default unless the party claimed to be in default pled or otherwise defended the action within the ten-day period.<sup>3</sup> Under Chapter 57, an affidavit that certain conditions have been met is no longer necessary, and an entry of default and a default judgment will take effect immediately.<sup>4</sup>

Under existing law, if an owner directs and obtains service of a prejudgment claim of right as specified in an unlawful detainer action,<sup>5</sup> the occupant may not object to the enforcement of that judgment.<sup>6</sup> Chapter 57 makes various procedural and clarifying

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1. See CAL. CIV. PROC. CODE § 585(a)-(b) (West Supp. 1991) (delineating when judgment on default may be rendered).

2. 1990 Cal. Legis. Serv. Ch. 207, sec. 2, at 1098 (West 1991) (amending CAL. CIV. PROC. CODE § 585.1) (repealed by Chapter 57). Conditions which had to be met included mailing a copy of the application to the person in default and the person's attorney, if the person was known, and, if the person was not known, the application had to so state. *Id.* See *Slusher v. Durr*, 69 Cal. App. 3d 747, 755, 138 Cal. Rptr. 265, 270 (1977) (holding that notice of entry of default must be mailed to defendant's last known address).

3. 1990 Cal. Legis. Serv., Ch. 207, sec. 2, at 1098 (West 1991) (amending CAL. CIV. PROC. CODE § 585.1) (repealed by Chapter 57).

4. Compare *id.* with 1991 Cal. Stat. ch. 57, sec. 2 (repealing CAL. CIV. PROC. CODE § 585.1. See CAL. CIV. PROC. CODE § 473 (West Supp. 1991) (establishing that relief can be granted for "mistake, inadvertence, surprise or excusable neglect"); § 473.5 (West Supp. 1991) (providing that relief can be granted from default for lack of actual notice); *Olivera v. Grace*, 19 Cal. 2d 570, 575, 122 P.2d 564, 567 (1942) (holding that relief can be granted from default due to extrinsic fraud or mistake).

5. See CAL. CIV. PROC. CODE § 1161 (West Supp. 1991) (definition of unlawful detainer).

6. *Id.* § 415.46(e) (amended by Chapter 57).

changes to the provisions for service of a prejudgment claim of possession.<sup>7</sup>

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**Civil Procedure; ex parte emergency protective orders--family or household members**

Code of Civil Procedure §§ 546, 547, 550 (amended); Penal Code § 12076.1 (repealed); §§ 12021, 12076 (amended)  
AB 108 (Friedman); 1991 STAT. Ch. 953

Under existing law, ex parte emergency protective orders<sup>1</sup> may be issued when law enforcement officers possess reasonable grounds to believe that persons are in immediate and present danger of domestic violence<sup>2</sup> by a household<sup>3</sup> or family member.<sup>4</sup> Under Chapter 953, ex parte emergency protective orders may be issued to protect against acts of domestic violence by non-family or household members.<sup>5</sup>

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7. *Id.* § 415.46 (amended by Chapter 57).

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1. *See* CAL. CIV. CODE § 4359(a)(2)-(3), (6) (West Supp. 1991) (definition of emergency protective orders available in response to non-marital domestic violence).

2. *See* CAL. PENAL CODE § 13700(b) (West Supp. 1991) (definition of domestic violence).

3. *See* CAL. CIV. PROC. CODE § 542(c) (West Supp. 1991) (defining a co-habitant as a household member).

4. *Id.* § 546(b) (amended by Chapter 953). *See* *Caldwell v. Coppola*, 219 Cal. App. 3d 859, 864, 268 Cal. Rptr. 453, 455 (1990) (granting an parte emergency protective order to restrain a family member, but ultimately finding that the service of process was defective because the server's interests were significantly similar to the party to be protected).

5. *See* CAL. CIV. PROC. CODE § 546(b) (amended by Chapter 953). *Id.* § 547(d) (amended by Chapter 953) (requiring the restrained party to participate in batterer's treatment counseling).

## Civil Procedure; Foreign-Money Claims Act

Code of Civil Procedure §§ 676, 676.1, 676.2, 676.3, 676.4, 676.5, 676.6, 676.7, 676.8, 676.9, 676.10, 676.11, 676.12, 676.13, 676.14, 676.15, 676.16 (new); § 2101 (amended).  
AB 1646 (Sher); 1991 STAT. Ch. 932

Under existing law, a judgment may or may not be entered in a foreign currency.<sup>1</sup> Chapter 932, which enacts the Uniform Foreign-Money Claims Act, allows parties to agree to the payment of an action<sup>2</sup> or distribution proceeding<sup>3</sup> in a foreign currency.<sup>4</sup> Under Chapter 932, the parties may agree upon the currency to be used as payment in any given transaction.<sup>5</sup> If the parties have not agreed to a particular foreign currency, the court may determine the proper currency by looking to the regular type of payment, trade usage, or currency in which the loss was ultimately felt or will be incurred by the parties.<sup>6</sup> If the claim is not asserted as a foreign-money claim, the amount is to be determined in United States dollars.<sup>7</sup>

Under existing law, if a federal tax lien is filed against personal property and the person against whom the action has been filed is a corporation or a partnership, notice must be filed with the office of the Secretary of State.<sup>8</sup> Under Chapter 932, if a lien has been

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1. CAL. CIV. PROC. CODE § 85 (West 1982) (neither expressly allows or disallows judges to enter judgments in foreign currency). *See* *Pecafflor Constr., Inc. v. Landes*, 198 Cal. App. 3d 342, 346, 243 Cal. Rptr. 605, 607 (1988) (holding that Canadian judgment satisfied in Canada with Canadian dollars must be respected by the California courts even though the exchange rate of United States dollars and Canadian dollars had fluxuated).

2. *See* CAL. CIV. PROC. CODE § 676.1(1) (enacted by Chapter 932) (definition of action). *See also* COLO. REV. STAT. § 13-62.1-101(1) (Supp. 1990) (defining action as a judicial proceeding or arbitration in which payment in money may be awarded or enforced with respect to a foreign-money claim).

3. *See* CAL. CIV. PROC. CODE § 676.1(4) (enacted by Chapter 932) (definition of distribution proceedings).

4. *Id.* § 676.6(a) (enacted by Chapter 932). *See id.* § 676.1(5) (enacted by Chapter 932) (definition of foreign-money).

5. *Id.* § 676.3(b) (enacted by Chapter 932).

6. *Id.* § 676.4(b)(1)-(3) (enacted by Chapter 932).

7. *Id.* § 676.6(a) (enacted by Chapter 932).

8. *Id.* § 2101(c)(1) (amended by Chapter 932).

filed against a personal trust, or the estate of a decedent, notice of the lien must be filed with the Secretary of the State.<sup>9</sup>

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## Civil Procedure; lis pendens

Code of Civil Procedure §§ 409.1, 409.2 (amended).  
SB 979 (Keene); 1991 STAT. Ch. 112

Under existing law, after a lis pendens<sup>1</sup> is filed, either of the parties to the action for which it was filed may move to have it expunged.<sup>2</sup> Furthermore, the court may require the party prevailing on the motion for expungement to give the losing party an undertaking<sup>3</sup> in the amount of that party's damages which result from the expungement or nonexpungement of the lis pendens.<sup>4</sup> Chapter 112 codifies existing case law which holds that only damages which directly result from the motion for expungement,

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9. *Id.* § 2101(c)(2),(3) (amended by Chapter 932).

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1. *See* CAL. CIV. PROC. CODE § 409 (West Supp. 1991) (providing that the purpose of a lis pendens is to give constructive notice to prospective purchasers and encumbrancers to real property of a pending action concerning title thereto). *See also id.* § 1049 (West 1980) (definition of pending action).

2. *Id.* § 409.1(a)-(b) (amended by Chapter 112). To prevent expungement of a lis pendens, the party who filed it must show that either the action affects title to, or right of possession of, the real property described in the lis pendens, or the party recording the lis pendens has not done so for an improper purpose or in bad faith. *Id.*

3. *See id.* § 995.190 (West Supp. 1991) (definition of undertaking).

4. *Id.* § 409.1(b). *See* *Stewart Development Co. v. Superior Court*, 108 Cal. App. 3d 266, 276-77, 166 Cal. Rptr. 450, 455-56 (1980) (holding that the proper measure of damages is all costs which proximately result from the expungement of the lis pendens, and that future commercial earnings derived from commercial real estate are too speculative to be awarded as damages).

and not from the underlying cause of action, may be awarded from the undertaking.<sup>5</sup>

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5. CAL. CIV. PROC. CODE §§ 409.1(b), 409.2 (amended by Chapter 112). *Elder v. Carlisle Insurance Co.*, 193 Cal. App. 3d 1313, 1319, 238 Cal. Rptr. 897, 901 (1987). A party is given an undertaking as a condition to the expungement of a lis pendens, and if the party which prevails in the underlying action does so solely on a cause of action that does not support the recordation of a lis pendens, the prevailing party may not satisfy that judgment out of the undertaking. *Id.*